

SUPERIOR COURT OF CALIFORNIA

County of San Diego

DATE: April 25, 2005 DEPT. 71 REPORTER A: CSR#
PRESENT HON. RONALD S. PRAGER REPORTER B: CSR#
JUDGE

CLERK: K. Sandoval

BAILIFF: REPORTER'S ADDRESS: P.O. BOX 120128
SAN DIEGO, CA 92112-4104

JUDICIAL COUNSEL
COORDINATION PROCEEDINGS
NO. JCCP 4221
AND 1V

TITLE [Rule 1550(b)]
NATURAL GAS CASES 1,11,111,

TENTATIVE RULING

A demurrer is a pleading used to *test the legal sufficiency* of other pleadings, it raises issues of law, not fact, regarding the form or content of the opposing party's pleading. (See: CCP sections 422.10 and 589)

For the purpose of testing the sufficiency of a cause of action, the demurrer admits the truth of all material facts properly pleaded. The sole issue raised by general demurrer is whether the facts pleaded state a valid cause of action - not whether they are true. No matter how unlikely or improbable, the allegations must be accepted as true for the purpose of ruling on the demurrer. (See: *Serrano v. Priest* (1971) 5 Cal.3d 584; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593)

"The interests of all parties are advanced by avoiding a trial and reversal for defect in pleadings. The objecting party is acting properly in raising the point at his first opportunity, by general demurrer. If the demurrer is erroneously overruled, he is acting properly in raising the point again, at his next opportunity. If the trial judge made the former ruling himself, he is not bound by it. [Citation.] And, if the demurrer was overruled by a different judge, the trial judge is equally free to reexamine the sufficiency of the pleading. [Citations.]" (*Pacific States Enterprises, Inc. v. the City of Coachella* (1993) 13 Cal.App.4th 1414, 1420, fn 3, *citing* *Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868) Therefore,

the Court reviews, anew, Defendants' demurrer and the issues raised therein despite the fact that Judge Haden has on numerous occasions overruled the same issues.

The Court grants the parties' respective requests for judicial notice.

The General Demurrer of the Sempra Defendants is **OVERRULED**. The Court finds the Second Amended Master Complaint states adequate facts to constitute the claims alleged therein.

Specifically, the Court finds Plaintiffs' claims are not pre-empted by federal law or the filed rate doctrine. The electricity claims are not preempted because the FERC does not regulate state anti-trust claims. (*In re Western States Wholesale Natural Gas Antitrust Litigation* 346 F.Supp.2d 1123, 1130-31) And the federal schemes provide no remedy for anti-trust claims. (*In re California Retail Natural Gas and Electricity Antitrust Litigation* 170 F. Supp.2d 1057; *Western States, supra*) Plaintiffs do not challenge any prices set by FERC. Any of Plaintiffs' claims challenging any electricity prices are a result of the anti-competitive conduct of Defendants. Plaintiffs do not seek a determination that the rates charged were just and reasonable, nor do Plaintiffs seek damages for the difference in any rate. Plaintiffs, however, do seek compensation for the alleged anti-trust conduct of Defendants that caused gas rates to skyrocket, and consequently electricity rates to soar. FERC does not control anti-competitive conduct within the states' control.

In addition, the gas claims are not preempted because courts have decided that "[n]o federal court has found the Natural Gas Act, the Federal Power Act, or the Natural Gas Policy Act pre-empt state regulation of the natural gas industry." (*In re Western States, supra* at 1132) And, Plaintiffs' complaint alleges Defendant wrongly affected the natural gas "spot market," which is not regulated by FERC. (*In re California Retail Natural Gas, supra* and *Western States, supra*) "[T]he natural gas market largely was deregulated at the time of the alleged anti-competitive conduct . . . the natural gas industry was driven almost completely by the market forces of supply and demand." (*In re Western States, supra* at 1139-40)

Defendants' challenge as to causation is improper at the demurrer stage as such inquiry involves factual analysis.

Based on the Court's ruling herein, the Court denies Defendants' request to stay the action.

On the face of the Complaint, the Complaint states adequate facts to constitute the causes of action alleged therein. As such, the Demurrer is **OVERRULED**.

